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2014 ALJ/IHO Institute
Lehigh University

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LEHIGH SPECIAL EDUCATION LAW SYMPOSIUM: ALJ/IHO INSTITUTE

	Thursday, June 26 *Rauch Business Center (621 Taylor Street), Room 161*	**Friday, June 27** *AM: Ben Franklin Tech Ventures building (3rd floor), 116 Research Drive, Mountaintop Campus* *PM: Iacocca Hall, 111 Research Drive, Room E-301*
8:30 a.m. – 9:55 a.m.	**Prehearing Procedures: Best Practice** *Deusdedi Merced (NY)* *panel: Ann Lockwood (TX), Bernadette Laughlin (OH), & Lynn Rubinett (TX)*	**National Case Law Update** *Perry A. Zirkel (PA)*
10:10 a.m. – 11:30 a.m.	**Conducting the Hearing I: Efficiency** *Deusdedi Merced (NY)* *panel: Barry Moscowitz (NJ) & J. Bernard McClellan (MD)*	
Lunch		
12:45 p.m. – 2:05 p.m.	**Conducting the Hearing II: Pro Se Parents and Lay Advocates** *Deusdedi Merced (NY)* *panel: Lucius Bunton (TX) & Linda Valentini (PA)*	**Lessons from and Implications of the Case Law** *Robert Doyle (AR), Erin Leff (DC) & Cathy Skidmore (PA)*
2:20 p.m. – 3:45 p.m.	**Effective Decision Writing** *Justyn Bates (NY)* *panel: Tom Badway (CT) & Deusdedi Merced (NY)*	**Remedies: Compensatory Education and Tuition Reimbursement** *Edward Bauer (FL)*

ALJ/IHO Institute Faculty

Presenters:

Deusdedi Merced, Esq., has 18 years of experience in special education and other-related litigation. Early in his career, Mr. Merced represented the New York City Board of Education in federal and state courts and administrative hearings. He then opened a five-attorney law firm and represented parents of children with disabilities in hundreds of IDEA due process hearings.

Mr. Merced currently is an independent consultant whose clients include state education agencies, including the New York and Illinois state departments of education. He provides training for more than 100 hearing officers in several states. Mr. Merced consults on legal issues, assisting state education agencies in drafting revisions to state laws, regulations, policies, and procedures to enhance the fairness, impartiality, and independence of special education hearing processes. Mr. Merced was recently appointed to serve as a State review officer in Nevada.

From 2010-2013, Mr. Merced served as the Chief Hearing Officer for the District of Columbia impartial, special-education hearing system. His accomplishments in his role as Chief Hearing Officer include achieving a thirty-percent reduction in IDEA complaints filed as a result of improvements in hearing officer performance. As Chief Hearing Officer, Mr. Merced monitored and supervised the process to ensure that the parties received timely, fair due process hearings and timely, high quality decisions. He worked to improve the performance of the IHOs by providing regular training, observing prehearing conferences and due process hearings, reviewing decisions and administrative records, and providing feedback on performance. Mr. Merced performed annual evaluations of each hearing officer consistent with performance criteria and standards. He also served as the primary IDEA mediator, settling 95 percent of the cases he mediated.

From 2008-2010, Mr. Merced served as an impartial hearing officer for the District of Columbia. None of the more than 200 cases over which he presided were appealed, which is a testament to his knowledge of special education law and his skill as an adjudicator.

As a result of his broad experience in special education litigation, training, and oversight, Mr. Merced has a deep appreciation for the unique perspectives of school districts, parents, and hearing officers. He has first-hand knowledge of the challenges hearing officers face in presiding over due process hearings. His extensive knowledge and experience have made Mr. Merced a sought-after speaker at nationally recognized conferences on special education. He has been a featured speaker at LRP's National Institute on Legal Issues of Educating Individuals with Disabilities, LRP's School Attorneys Conference, as well as the Academy for IDEA Administrative Law Judges and Hearing Officers at Duke Law School and Seattle University School. Mr. Merced is a graduate of Brandeis University and the Albany Law School of Union University.

Dr. Perry Zirkel has conducted impartial hearing officer training programs in several states, including Arkansas, California, the District of Columbia, Illinois, Iowa, Massachusetts, Michigan, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, South Carolina, Texas, Virginia, and Wisconsin. He has also conducted such programs nationally at the Seattle U. law school, LRP conference, and U. San Diego law school as well as regionally via a webinar for the states in the Mountain Plains Resource center and on a blended live/broadcast basis for the states in the Northeast Education Resources Center. Several of these programs have included mediators and/or state complaint resolution personnel.

After helping to write the Pennsylvania regulations for the state's second tier in response to *Muth v. Central Bucks School District*, 839 F.3d 113 (3d Cir. 1988), he served as co-chair of the resulting Pennsylvania Special Education Appeals Panel from 1990 to 2007. He has also conducted, for the respective state education departments, a stakeholder session concerning impartial hearings in Connecticut (June 2008) and a report evaluating organizational options for special education hearings in Massachusetts (May 2009).

His publications include articles on state IHO systems; impartiality of IHOs; procedural issues for IHOs, such as burden of proof and expert witnesses; empirical studies of the frequency and outcomes of IHO decisions; and substantive issues, such as the standard for FAPE, the calculation of compensatory education, the review of manifestation determinations, and the remedial authority of IHOs.

Dr. Zirkel is the university professor of education and law at Lehigh University, where he formerly was dean of the College of Education and more recently held the Iacocca Chair in Education for its five-year term. He has a Ph.D. in Educational Administration and a J.D. from the University of Connecticut, and a Master of Laws degree from Yale University. He has written more than 1,350 publications on various aspects of school law, with an emphasis on legal issues in special education. He writes a regular column in *Principal* magazine and did so previously for *Phi Delta Kappan* and *Teaching Exceptional Children*. Past president of the Education Law Association, he is the author of the CEC monograph *The Legal Meaning of Specific Learning Disability* and the latest edition of the two-volume reference *Section 504, the ADA, and the Schools.* He also directs the annual Lehigh Special Education Law Conference, which will have its 41^{2nd} meeting on May 9, 2014. The University Council for Educational Administration recently honored Dr. Zirkel with it Edwin M. Bridges Award, which recognizes original, outstanding work that contributes to the knowledge and understanding of how best to prepare future generations of educational leaders.

Justyn P. Bates, Esq., currently serves as a State Review Officer and director of the Office of State Review at the New York State Education Department, which is responsible for second tier administrative review of more than 200 first tier impartial hearing decisions annually. Prior to serving as a review officer, he was an attorney advisor to several New York review officers. He was also assistant counsel to the New York State Office of Children and Family Services and developed interest in special

education matters when he addressed, among other things, matters related to the agency's obligations to provide special education services to youth placed in juvenile justice facilities. Prior to entering the special education field, he served as assistant counsel to the New York State Department of Public Service, litigating energy related matters in administrative proceedings. He also drafted memorandum decisions and formal opinions for the New York Public Service Commission in energy law matters. He served in the New York Unified Court System, first as a judicial extern in the Family Court and Supreme Court and later as an appellate court attorney for the Appellate Division of the State Supreme Court. Prior to earning his J.D. at Albany Law School of Union University, he graduated with an M.A. in systematic theology from Union Theological Seminary in the City of New York and a B.A. in religious studies from Siena College.

Edward T. Bauer, Esq., has served since 2010 as an administrative law judge with the Florida Division of Administrative Hearings, presiding over various types of cases, including IDEA due process hearings originating in Miami-Dade, Broward, Palm Beach, and Monroe counties. Judge Bauer received a J.D. with high honors from Florida State University College of Law, where he served as a member of the law review from 1998-2000. Upon graduation he joined the law firm of Brooks, LeBoeuf, Bennett, Foster & Gwartney as an associate attorney and was named a firm partner in 2006. His practice included appeals (criminal, civil, and administrative), criminal defense, as well as administrative litigation on behalf of the Florida Commissioner of Education. In June 2010, the Florida Bar certified Judge Bauer as an expert in appellate practice.

Panelists:

Tom Badway is the Principal of Insights, Issues, and Solutions, LLC, an educational consulting firm specializing in mediation, IEP facilitation, professional development and program review activities in the field of special education. Prior to this role, he was employed by the Connecticut State Department of Education for twenty-two years, where he served as education consultant and unit coordinator of the due process unit. He managed the ministerial activities pertaining to due process hearings, advisory opinions and mediations. Through monthly sessions, he provided or arranged for the professional development of impartial hearing officers. In addition to serving as the primary mediator, he trained and provided on-going functional supervision to the state's mediators. He also conducted extensive presentations and professional development activities regarding legal, regulatory, and due process matters at the local, state, regional, and national levels to educators, parents, attorneys, mediators, and hearing officers.

Lucius Bunton, Esq., is an attorney in Austin, Texas, and has presided since 1982 as a Special Education Hearing Officer (under contract with the Texas Education Agency) in more than 800 special education cases. In 1995 he began mediating special education disputes and has mediated more than 600 cases. He graduated from the University of Texas and from law school at Southern Methodist University.

Dr. Robert Doyle, Ph.D., has served as an impartial hearing officer for the state of Arkansas since 1982. He graduated from Texas Tech University in 1973 with a doctorate

in psychology where his doctoral dissertation addressed the use of a vigilance task to measure the effects of distraction and attention deficits among children with learning disabilities. Although his primary occupational focus has been health psychology, he is internationally certified as a senior fellow at the Biofeedback Certification International Alliance. He has maintained his interest in the education of children with disabilities as a hearing officer and as member of the National Association of administrative Law Judges (NAALJ). He has presented workshops and participated in panel discussions on special education with the NAALJ as well as the University of Arkansas Bowen School of Law. He has presented as a special lecturer at the University of Central Arkansas on special education and due process hearings for their graduate school psychology doctoral program.

Erin Leff, Esq., is an attorney, retired school psychologist, and mediator who has worked in special education for over 30 years. She earned an M.S. in educational psychology from the University of Wisconsin-Madison and a J.D. from Rutgers University – Camden. She has also worked as a special education complaint investigator, due process hearing officer, administrative law judge and/or appeals officer in multiple jurisdictions including New Mexico, Maryland, and the District of Columbia. She has managed the due process system in New Jersey and served as Deputy Special Master and Settlement Agreement Liaison in a federal district court case regarding special education in the Baltimore City Public Schools. Ms. Leff provides training on special education and teaches graduate courses at Loyola University of Maryland and Johns Hopkins University.

Ann Lockwood, Esq., has served the State of Texas as a special education hearing officer for twenty-four years and as a special education mediator for fourteen years. She has considerable litigation experience in private practice with a focus on school law, civil rights litigation, labor and employment law, and general business litigation. A former special education teacher, she has been a speaker and author on topics related to special education law and has served as an adjunct instructor in legal writing at the University of Houston School of Law. Attorney Lockwood received a bachelor's degree magna cum laude from Arizona State University, master's degree in special education from Indiana University Bloomington, and law degree from the University of Texas – Austin.

J. Bernard McClellan, Esq. has been the Director of Quality Assurance and Administrative Law Judge for the Maryland Office of Administrative Hearings since 2008. He has served as an administrative law judge in Maryland for over fifteen years, adjudicating IDEA claims, among others. He has been admitted to appear in Maryland appeals courts and federal district courts, as well as both the Third and Fourth Circuits Courts of Appeals. He was elected in 2012 and serves on the Board of Governors of the National Association of Administrative Law Judiciary (NAALJ). He is a graduate of the University of Maryland, College Park, and the University of Baltimore School of Law, where he has served as an adjunct faculty member for over a decade.

Barry E. Moscowitz, Esq., is a State Administrative Law Judge in the Office of Administrative Law in Newark, New Jersey, where he presides over contested cases

transmitted from State agencies, including special education cases from the Office of Special Education Programs. Before he was appointed as an ALJ, Judge Moscowitz clerked for trial judges of the Superior Court in Newark, was an associate in a mid-sized law firm in Essex County, and founded his own law firm in Montclair, New Jersey. During this time, he was an active member of the Essex County Bar Association, served as the Public Advocate for the Township of West Orange, and became an arbitrator for the American Arbitration Association and the National Arbitration Forum. Judge Moscowitz is the former chair of the editorial board of *New Jersey Lawyer, the Magazine*, and is credited with published opinions in the New Jersey Appellate Division and the United States Supreme Court. He received his undergraduate degree from the University of Pennsylvania and his law degree from Seton Hall University, where he has also taught legal research and writing.

Lynn E. Rubinett, Esq., is a credentialed distinguished mediator in private practice in Austin, Texas. Her current practice focuses exclusively on alternative dispute resolution in the areas of mediation, arbitration, and independent hearing officer services. As a former litigator in labor and employment, civil rights, disability, administrative, and education law, Attorney Rubinett has litigated complex cases in both administrative and judicial forums. For the past twenty years she has worked exclusively as a third party neutral, primarily as a special education due process hearing officer and mediator. She has served the State of Texas as a hearing officer for twenty years and as a special education mediator for ten years. She is an honors graduate of both Stanford University and Northeastern University Law School.

Cathy A. Skidmore, Esq., a Pennsylvania special education hearing officer, has been active in the field of special education dispute resolution for nearly twenty years in both formal and alternative dispute resolution processes. She is a graduate of Duquesne University Law School, earned a Master of Education degree from the University of Pittsburgh, and in 2011 became a Certified Hearing Official. She has been a frequent speaker and lecturer on various aspects of special education and disability law, currently serves as an adjunct professor of special education at Drexel University, and remains active in numerous state and national special education and legal professional organizations.

Linda M. Valentini, Psy.D. is a senior Pennsylvania Special Education Hearing Officer who over the past 17 years has presided over more than 2,100 due process cases. She has been granted the credential of Certified Hearing Official from the National Association of Hearing Officials. She received her Bachelor's Degree in psychology summa cum laude from LaSalle University and her Masters and Doctoral Degrees in clinical psychology from Hahnemann Medical College. In partial fulfillment of her doctoral requirements she studied for six months with Miss Anna Freud at The Hampstead Clinic in London. A licensed psychologist in the state of Pennsylvania, Dr. Valentini is also a Pennsylvania certified school psychologist and has been certified as a mediator.

Various opportunities throughout Dr. Valentini's professional career include being a houseparent in a residential treatment facility for juvenile offenders, the assistant director

of a private youth services agency, the executive director of a private children's mental health agency, a private practitioner providing evaluations and treatment to children, adolescents and adults, a consultant in the area of child/adolescent physical and sexual abuse and behavioral health, and a clinical supervisor of graduate students in psychology, social work and creative arts therapies. Each of these roles has deepened her knowledge and enhanced her understanding of the challenges faced by exceptional children, their parents, their teachers and their school districts.

NATIONAL UPDATE OF CASE LAW UNDER THE IDEA AND § 504/A.D.A.: 1/1/13–6/1/14[1]

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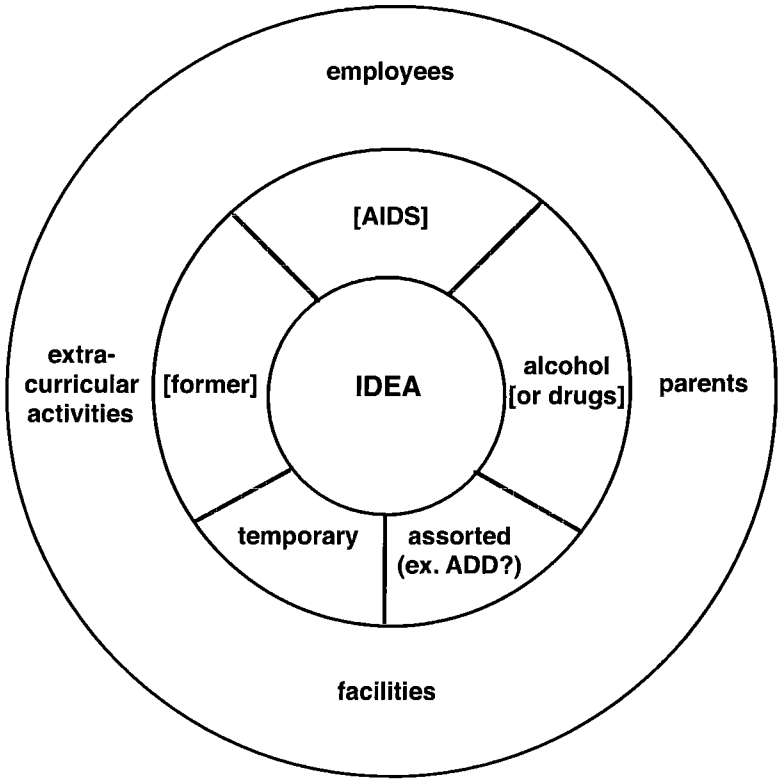

LEHIGH SPECIAL EDUCATION LAW SYMPOSIUM

Notes:

- ***P*** = Parent won; ***S*** = School district won; **( )** = Inconclusive
- supra = cross reference to earlier full citation; IHO = impartial hearing officer
- Court decisions or component concepts for initial discussion are highlighted in yellow.
- Decisions for particular attention are in shaded in grey.
- Officially published federal appeals court decisions are in **bold font**.
- The acronyms are listed in a glossary at the end of this document.

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[1]A long version of the Zirkel National Update, which extends back to 1998, is available as a free download at www.nasdse.org (in the "Publications" section). The coverage of both this document and the long-term version is limited to officially published decisions (and those in the Federal Appendix).

I. IDENTIFICATION (INCLUDING CHILD FIND)

(P)/S M.A. v. Torrington Bd. of Educ., __ F. Supp. 2d __, 62 IDELR ¶ 28 (D. Conn. 2013)
- ruled that district violated child find, per Forest Grove,[2] but that the child, who had diagnoses of asthma and various serious allergies (e.g., mold), was not eligible as OHI due to lack of need for special education, thus denying tuition reimbursement but leaving the remedy question open for supplemental briefs [tuition reimbursement case][3]

II. APPROPRIATE EDUCATION (INCLUDING ESY)[4]

S S.W. v. Governing Bd. of E. Whittier Sch. Dist., 504 F. App'x 571, 60 IDELR ¶ 124 (9th Cir. 2013)
- summarily ruling that IEP was not substantively deficient due to insufficient PELs or lack of appropriate goals

P/S Reg'l Sch. Unit 51 v. Doe, 920 F. Supp. 2d 168, 60 IDELR ¶¶ 163 and 197 (D. Me. 2013)
- ruled that district violated child find by providing student with a 504 plan, not an IEP, but upheld the substantive appropriateness of the IEP that the district provided after two years [tuition reimbursement as compensatory education case]

S FB v. New York City Dep't of Educ., 923 F. Supp. 2d 570, 60 IDELR ¶ 189 (S.D.N.Y. 2013)
- ruled that student with autism 1) did not need an FBA under state law, and 2) state law violation of absence of parent counseling and training alone was insufficient procedural violation to amount to denial of FAPE [tuition reimbursement case]

P G.G. v. Dist. of Columbia, 924 F. Supp. 2d 273, 60 IDELR ¶ 183 (D.D.C. 2013)
- ruled that district's child-find failure to evaluate the child within the prescribed period constituted a denial of FAPE, awarding reimbursement until the completion of the IEP [tuition reimbursement case]

S Pass v. Rollinsford Sch. Dist., 928 F. Supp. 2d 349, 60 IDELR ¶ 214 (D.N.H. 2013)
- upheld substantive appropriateness of IEP, based on snapshot standard, for high school student with SLD in terms of both academic and social needs

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[2] The district made the legal error of contending that the exclusive responsibility for evaluations and IEPs for parentally placed children in private schools belongs to the district of location. Thus, the case illustrates the potential intersection of tuition reimbursement and parentally placed children when the placement is "unilateral."

[3] In a subsequent, unpublished decision, the court denied the parents' alternative requests for tuition reimbursement and money damages, but took the equities of the case into consideration in awarding the parents' partial attorneys' fees amounting to $56K. M.A. v. Torrington Bd. of Educ., __ F. Supp. 2d __, 63 IDELR ¶ 64 (D. Conn. 2014).

[4] 20 U.S.C. § 1415(f)(3)(E); 34 C.F.R. § 300.513(a)(2):

> In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies--
> (i) Impeded the child's right to a FAPE;
> (ii) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or
> (iii) Caused a deprivation of educational benefit.

S T.B. v. Haverstraw-Stony Point Cent. Sch. Dist., 933 F. Supp. 2d 554, 60 IDELR ¶ 279 (S.D.N.Y. 2013)
- ruled that IEP for second grader with ADHD, ODD and PDD diagnoses was substantively appropriate based on careful review of the record in accordance with Second Circuit's decision in M.H.,[5] thereby agreeing with review officer's, not hearing officer's, decision [tuition reimbursement case]

S Torda v. Fairfax Cnty. Sch. Bd., 517 F. App'x 162, 61 IDELR ¶ 4 (4th Cir. 2013), cert. denied, 134 S. Ct. 1538 (2014)
- rejected claim that failure to evaluate auditory processing disorder (APD) of child with intellectual disabilities (ID) amounted to denial of FAPE where 1) failure to prove that child has APD separable from his ID; 2) parent prevented the challenged reevaluation; and 3) district properly accommodated and remediated any auditory processing deficits [compensatory education case]

P Dep't of Educ. v. S.C., 938 F. Supp. 2d 1023, 61 IDELR ¶ 18 (D. Haw. 2013)
- ruled that IEP was not sufficiently individualized and was not the LRE for child with autism [tuition reimbursement case]

S A.M. v. Dist. of Columbia, 933 F. Supp. 2d 193, 61 IDELR ¶ 21 (D.D.C. 2013)
- rejected parent's predetermination claim and ruled that IEP for student with SLD met substantive standard for FAPE (tuition reimbursement case]

S D.W. v. Milwaukee Pub. Sch., 526 F. App'x 672, 61 IDELR ¶ 32 (7th Cir. 2013)
- upheld substantive appropriateness of IEP of ninth-grade student with intellectual disabilities despite student's low grades, which were based on objective criteria for all ninth graders

S J.T. v. Dumont Pub. Sch., 533 F. App'x 44, 61 IDELR ¶ 33 (3d Cir. 2013)
- upheld procedural and substantive appropriateness of placement of student with autism in inclusionary kindergarten in non-neighborhood school

P Deer Valley Unified Sch. Dist. v. L.P., 942 F. Supp. 2d 880, 61 IDELR ¶ 48 (D. Ariz. 2013)
- ruled that district's proposed placement of high-functioning student with autism in "special school" did not meet substantive standard for FAPE because the lack of interaction with peers at the same or higher level of verbal skills prevented meeting his IEP socialization goals, but rejected the parents' procedural, predetermination claim based on the designated IEP location [tuition reimbursement case]

[5] In M.H. v. New York City Dep't of Educ., 685 F.3d 217, 59 IDELR ¶ 62 (2d Cir. 2012), the Second Circuit applied judicial deference in a two-tier system based on a thoroughness criterion.

P **Doug C. v. Hawaii Dep't of Educ., 720 F.3d 1038, 61 IDELR ¶ 91 (9th Cir. 2013)**
- held that district denied FAPE to student with autism where it held IEP meeting w/o parent even though parent actively sought to reschedule the meeting for a time soon after the deadline and, though apparently not essential, the parent's absence resulted in the strong likelihood that the private placement was not sufficiently considered [tuition reimbursement case]

S R.G. v. Downingtown Area Sch. Dist., 528 F. App'x 153, 61 IDELR ¶ 93 (3d Cir. 2013)
- upheld substantive appropriateness of proposed IEP for second grader with rare neurological disorder based on testimony of S/L therapist that her IEP services would be individualized [tuition reimbursement case]

S W.K. v. Harrison Sch. Dist., 509 F. App'x 565, 61 IDELR ¶ 123 (8th Cir. 2013)
- rejected procedural challenge to IEP, concluding that parents' knowledge of child's aggressive behaviors mitigated failure to provide proper notice for safety-related IEP meeting [tuition reimbursement case]

S James v. Dist. of Columbia, 949 F. Supp. 2d 134, 61 IDELR ¶ 141 (D.D.C. 2013)
- ruled that the district's proposed reassignment of student to "substantially and materially similar placement" did not require parental participation and that this placement met the appropriateness standard—"one which can implement a student's IEP and meet his specialized educational and behavioral needs" [tuition reimbursement case]

P D.C. v. New York City Dep't of Educ., 950 F. Supp. 2d 494, 61 IDELR ¶ 25 (S.D.N.Y. 2013)
- ruled that district's proposed placement was not substantively appropriate where the evidence that it would provide a seafood-free environment to 10-year-old with autism and seafood allergy were R.E.-excluded statements[6] of school officials after the parent's unilateral placement decision [tuition reimbursement case]

S Horen v. Bd. of Educ., 948 F. Supp. 2d 793, 61 IDELR ¶ 103 (N.D. Ohio 2013)
- ruled, in longstanding line of litigation with pro se parents of child with multiple disabilities, that 1) the parents failed to fulfill their duty to participate in the IEP process, thereby impeding the process "irredeemably" and accounting for lack of IEP, 2) they were responsible for their child's attendance, and 3) district's offered placement in self-contained special education class as appropriate and the LRE

S H.C. v. Katonah-Lewisboro Union Free Sch. Dist., 528 F. App'x 64, 61 IDELR ¶ 121 (2d Cir. 2012)
- upholding substantive appropriateness of IEP for second-grade student with SLD despite growing gap from peers' achievement and lack of parents' preferred assistive technology [tuition reimbursement case]

[6] In R.E. v. New York City Dep't of Educ., 694 F.3d 167, 59 IDELR ¶ 241 (2d Cir. 2012), cert. denied, 133 S. Ct. 2802 (2013), the Second Circuit adopted a modified four-corners rule with regard to evidence not stated in the IEP.

P Turner v. Dist. of Columbia, 952 F. Supp. 2d 31, 61 IDELR ¶ 126 (D.D.C. 2013)
- rejected FAPE challenges based on lack of special education teacher on IEP team (nonprejudicial) and transition plan (moot) but ruled denial of FAPE based on lack of implementation of special education services in general education classroom (via use of paraprofessional rather than special education teacher), remanding for compensatory education

S W.H. v. Schuykill Valley Sch. Dist., 954 F. Supp. 2d 315, 61 IDELR ¶ 133 (E.D. Pa. 2013)
- ruled that IEPs for child with speech/language and behavioral issues was substantively appropriate and that district did not significantly impede parental opportunity of participation

S V.M. v. N. Colonie Cent. Sch. Dist., 954 F. Supp. 2d 102, 61 IDELR ¶ 134 (N.D.N.Y. 2013)
- rejected challenges of parent of student with Down Syndrome to successive IEPs due to parent's repeated refusal to consent to reevaluation and, in any event, to insufficient proof of material non-implementation and of harm from lack of FBA [compensatory education case]

S **M.W. v. New York City Dep't of Educ., 725 F.3d 131, 61 IDELR ¶ 151 (2d Cir. 2013)**
- upheld procedural and substantive appropriateness of district's proposed IEP for nine-year-old with autism, ADHD, and Tourette syndrome, including lack of FBA and parental counseling in violation of state law [tuition reimbursement case]

S **Munir v. Pottsville Sch. Dist., 723 F.3d 423, 61 IDELR ¶ 152 (3d Cir. 2013)**
- ruled that the district's proposed IEP for high school student with ED was substantively appropriate, where it incorporated most of the recommendations of the private school's evaluation and where smaller classes and more emotional support were not necessary for meaningful benefit

S K.L. v. New York City Dep't of Educ., 530 F. App'x 81, 61 IDELR ¶ 184 (2d Cir. 2013)
- upheld substantive appropriateness of proposed IEP for child with autism, concluding that consideration of testimony about additional services the district "would have" provided does not invalidate an adjudicative decision under the IDEA where permissible evidence supports the IHO's or court's ruling [tuition reimbursement case]

S A.M. v. New York City Dep't of Educ., 964 F. Supp. 2d 270, 61 IDELR ¶ 214 (S.D.N.Y. 2013)
- rejected procedural challenges (e.g., lack of sp. ed. teacher on IEP team as nonprejudicial and predetermination unproven) and substantive challenges to proposed IEP for child with intellectual and learning disabilities, including application of "opening the door" and "on its face" evidentiary rules [tuition reimbursement case]

P/S Tyler W. Upper Perkiomen Sch. Dist., 963 F. Supp. 2d 427, 61 IDELR ¶ 218 (E.D. Pa. 2013)
- ruled that 1) evaluation was appropriate because, although it omitted some of his numerous diagnoses, it identified the child's individual needs; 2) the child's placement in a therapeutic day school was substantively appropriate and the LRE; but 3) the lack of implementation of the IEP while the child was in partial hospitalization was a denial of FAPE [compensatory education case]

S R.C. v. Keller Indep. Sch. Dist., 958 F. Supp. 2d 718, 61 IDELR ¶ 221 (N.D. Tex. 2013)
- ruled that IEP was substantively appropriate based on ED where additional classification of autism was not clear or necessary [tuition reimbursement case]

S D.B. v. New York City Dep't of Educ., 966 F. Supp. 2d 315, 61 IDELR ¶ 245 (S.D.N.Y. 2013)
- ruled that district's failure to conduct triennial reevaluation was not fatal procedural violation where the district had adequate evaluative data from other sources and that the proposed IEP was also substantively appropriate for the 12-year-old with autism [tuition reimbursement case]

S N.K. v. New York City Dep't of Educ., 961 F. Supp. 2d 577, 61 IDELR ¶ 252 (S.D.N.Y. 2013)
- rejected claims of procedural inappropriateness (e.g., lack of parent counseling/ training per state law) and substantive inappropriateness (e.g., teacher-student ratio) of proposed IEP for student with multiple disabilities [tuition reimbursement case]

(P)/S P.G. v. New York City Dep't of Educ., 959 F. Supp. 2d 499, 61 IDELR ¶ 258 (S.D.N.Y. 2013)
- upheld the procedural appropriateness of proposed IEP and its substantive appropriateness except remanded to determine whether the teacher-student ratio, which the district raised in its opening statement and evidence, was appropriate [tuition reimbursement case]

S Patterson v. Dist. of Columbia, 965 F. Supp. 2d 126, 61 IDELR ¶ 278 (D.D.C. 2013)
- ruled that temporary imposition of inadequate transition plan was not prejudicial procedural violation where district cured it with appropriate transition services

S Johnson v. Dist. of Columbia, 962 F. Supp. 2d 263, 61 IDELR ¶ 286 (D.D.C. 2013)
- upheld substantive appropriateness of district's proposed program for student with ED [tuition reimbursement case]

S K.S. v. Dist. of Columbia, 962 F. Supp. 2d 216, 61 IDELR ¶ 291 (D.D.C. 2013)
- upheld substantive appropriateness of IEPs in grades 5 and 6 for student with SLD [tuition reimbursement case]

P Jefferson Cnty. Bd. of Educ. v. Lolita S., __ F. Supp. 2d __, 62 IDELR ¶ 2 (N.D. Ala. 2013)
- ruled that IEP teenager with SLD was not substantively appropriate in terms of reading and transition skills [compensatory education case]

S E.L. v. Chapel Hill-Carrboro Bd. of Educ., 975 F. Supp. 2d 528, 62 IDELR ¶ 4 (M.D.N.C. 2013)
- ruled that district's embedded implementation, including supervised S/LT interns, rather than the one-on-one approach that was the preference of the resigned S/L therapist and that was the parents' interpretation, fulfilled IEP provision for four hours per week of SLT in the "total school environment" of eight-year-old with autism

P/S Dist. of Columbia v. Vinyard, 971 F. Supp. 2d 1064, 62 IDELR ¶ 13 (D.D.C. 2013); see also Dist. of Columbia v. Wolfire, __ F. Supp. 2d, 62 IDELR ¶ 198 (D.D.C. 2014)
- ruled that district of residence was obligated to prepare an appropriate IEP for a parentally placed private school child upon notice of the parent's interest in enrolling the child but that the obligation extinguishes upon the parent's decision not keep the child in the private placement

S Jalloh v. Dist. of Columbia, 968 F. Supp. 2d 203, 62 IDELR ¶ 18 (D.D.C. 2013)
- ruled that district's notice to both grandparents and mother of transfer of child with ED and ADHD due to school closing was proper; the IEP meeting with only the grandfather was not a denial of FAPE after due notice of the meeting to the grandmother and mother and upon no change in the IEP except the school; and that the new school was able to implement the IEP appropriately [tuition reimbursement case]

S T.G. v. New York City Dep't of Educ., 973 F. Supp. 2d 320, 62 IDELR ¶ 20 (S.D.N.Y. 2013)
- rejected claims of procedural inappropriateness (e.g., lack of FBA per state law and failure to discuss nonpublic placements) and substantive inappropriateness (e.g., teacher-student ratio) of proposed IEP for student with autism [tuition reimbursement case]

S D.A.B. v. New York City Dep't of Educ., 973 F. Supp. 2d 344, 62 IDELR ¶ 21 (S.D.N.Y. 2013)
- rejected claims of procedural inappropriateness (e.g., goals that were insufficiently measurable) and substantive inappropriateness (e.g., teacher-student ratio) of proposed IEP for student with autism [tuition reimbursement case]

P F.O. v. New York City Dep't of Educ., __ F. Supp. 2d __, 62 IDELR ¶ 51 (S.D.N.Y. 2013)
- ruled that proposed IEP for child with autism and other disabilities was not reasonably calculated for benefit—insufficient attention to physician's testimony that autism was the child's primary area of need [tuition reimbursement case]

S L.Y. v. Bayonne Bd. of Educ., 542 F. App'x 139, 62 IDELR ¶ 71 (3d Cir. 2013)
- upheld resident district's proposed IEP and its right to file for an impartial hearing to challenge the charter school's placement of the child, upon its conclusion that it could no longer meet his special education needs appropriately, in an out-of-district private school

P/S T.G. v. Midland Sch. Dist., 848 F. Supp. 2d 902, 58 IDELR ¶ 104 (C.D. Ill. 2012), aff'd sub nom. Giosta v. Midland Sch. Dist. No. 7, 542 F. App'x 523, 62 IDELR ¶ 72 (7th Cir. 2013)
- upheld substantive and procedural formulation and the implementation of the IEP for grades 7-9 except for reading/writing and vocational components in grade 9 [compensatory education case]

P R.G. v. New York City Dep't of Educ., __ F. Supp. 2d __, 62 IDELR ¶ 84 (E.D.N.Y. 2013)
- ruled that absence of regular ed teacher on IEP team constituted a denial of FAPE for the lack of fair consideration of a mainstreamed placement, limiting the remedy to re-doing the program/placement process properly [tuition reimbursement case—IHO found private placement inappropriate but district had paid the tuition in the interim]

S Coleman v. Pottstown Sch. Dist., __ F. Supp. 2d __, 62 IDELR ¶ 105 (E.D. Pa. 2013)
- upheld appropriateness of IEP for high school student with ED, both substantively (e.g., sufficient 1:1 instruction) and procedurally (e.g., lack of FBA and progress monitoring) [compensatory education and tuition reimbursement case]

S **K.A. v. Fulton Cnty. Sch. Dist., 741 F.3d 1195, 62 IDELR ¶ 161 (11th Cir. 2013)**
- ruled that district may amend the IEP at duly conducted IEP meeting even if the parent objects (and even with a deficient notice if not prejudicial to the parents)

S Jenn-Ching Luo v. Baldwin Union Free Sch. Dist., __ F. App'x __, 62 IDELR ¶ 162 (2d Cir. 2013)
- brief ruling that affirmed dismissal of alleged procedural violations where they did not deny the child "the right to a [FAPE], deprive [him] of educational benefits, or unlawfully preclude [the parent] from participating in the decision-making process concerning his son's education"

(P) Lofton v Dist. of Columbia, __ F. Supp. 2d __, 62 IDELR ¶ 175 (D.D.C. 2013)
- granted preliminary injunction to reinstate student in private placement per prior IEP because, in addition to significantly impeding the parent's participation, the public school placement could not implement the OT provision of the new IEP

S F.L. v. New York City Dep't of Educ., __ F. App'x __, 62 IDELR ¶ 191 (2d Cir. 2014)
- upheld substantive and procedural appropriateness of proposed IEP for student with autism, including use of retrospective testimony (i.e., not stated in the IEP) to explain, not add to the IEP [tuition reimbursement case]

S S.M. v. Taconic Hills Cent. Sch. Dist., __ F. App'x __, 62 IDELR ¶ 223 (2d Cir. 2014)
- short opinion that district's procedural violations in the proposed placement of student with autism at specialized day school did not result in denial of FAPE (e.g., district's "pendency" plan to provide IEP services after parent filed for hearing to challenge lack of openings at the proposed private school)

P C.L. v. New York City Dep't of Educ., __ F. App'x __, 62 IDELR ¶ 224 (2d Cir. 2014)
- short opinion deferring to IHO's —more well reasoned than the SRO's—conclusion that district did not meet its burden to prove that the proposed 6:1:1 program would enable the child to learn new material [tuition reimbursement case—appropriateness of private placement not at issue]

P K.E. v. Dist. of Columbia, __ F. Supp. 2d __, 62 IDELR ¶ 236 (D.D.C. 2014)
- ruled that district's failure to have completed IEP available on the first day of the school year was prejudicial procedural violation in the circumstances of this case, which included a "premature" but not unreasonable unilateral placement [tuition reimbursement case]

S N.M. v. Cent. Bucks Sch. Dist., __ F. Supp. 2d __, 62 IDELR ¶ 237 (E.D. Pa. 2014)
- upheld substantive appropriateness of successive IEPs for student with SLD and OHI (PTSD and anxiety disorder), including reliance on teachers' progress reports when the student's test scores were mixed and their response to bullying was reasonable though not optimal [tuition reimbursement case]

P A.K. v. Gwinnett Cnty. Sch. Dist., __ F. App'x __, 62 IDELR ¶ 253 (2d Cir. 2014)
- rejected pro se parent's proposed placement of student with severe autism in the home rather than in a specialized classroom based on the statutory preference for integration, including social benefits, and the district's ability to provide the special diet for the child

S G.W. v. Rye City Sch. Dist., __ F. App'x __, 62 IDELR ¶ 254 (2d Cir. 2014)
- brief ruling that district's proposed IEP for first grader with SLI/SLD was substantively appropriate and district had not engaged in spoliation of e-mail evidence [tuition reimbursement case]

S Porter v. Illinois State Bd. of Educ., 6 N.E.3d 424, 62 IDELR ¶ 267 (Ill. Ct. App. 2014)
- affirmed IHO's decision that the district's modified IEP for the elementary student with SLD, which provided for 25% time in a special education class and multi-sensory instruction, was appropriate rather than parent's proposed placement in a therapeutic day school, rejecting the predetermination claim and upholding the LRE rationale

P **C.F. v. New York City Dep't of Educ., 746 F.3d 68, 62 IDELR ¶ 281 (2d Cir. 2014)**
- ruled that that the procedural violations in the proposed IEP, based on state law, of failing to provide for parent training and counseling and in producing an inappropriately vague BIP in the absence of an FBA in combination with its substantive inadequacy of providing for a 6:1 student/teacher ratio, where the child clearly needed a 1:1 ratio, amounted to a denial of FAPE [tuition reimbursement case]

S M.S. v. New York City Dep't of Educ., __ F. Supp. 2d __, 62 IDELR ¶ 297 (E.D.N.Y. 2013)
- rejected procedural, substantive, and implementation challenges to proposed IEP for child with autism and found no fatal reliance on retrospective testimony [tuition reimbursement case]

S A.G. v. Paso Robles Joint Unified Sch. Dist., __ F. App'x __, 63 IDELR ¶ 2 (9th Cir. 2014)
- ruled that lack of general education teacher at IEP meeting, lack of FBA-BIP per state law, and lack of quantifiable present educational levels were harmless procedural violations in light of student's progress

P/S **T.M. v. Cornwall Cent. Sch. Dist., __ F.3d __, 63 IDELR ¶ 31 (2d Cir. 2014)**
- ruled the IDEA's LRE requirement applies to ESY placements just as it does to school-year placements but that the lack of an FBA-BIP and parent counseling training (both per state law) were procedural violations that did not result in a substantive loss of education [tuition reimbursement case]

S M.O. v. New York City Dep't of Educ., __ F. Supp. 2d __, 63 IDELR ¶ 37 (S.D.N.Y. 2014)
- upheld substantive appropriateness of proposed IEP for child with S/LI, rejecting challenge based on availability of the classroom where parents' unilateral placement mooted the issue and rejecting challenge based on late review-officer decision based on lack of prejudice to the child [tuition reimbursement case]

P Scott v. New York City Dep't of Educ., __ F. Supp. 2d __, 63 IDELR ¶ 43 (S.D.N.Y. 2014)
- ruled that the various procedural violations (e.g., failure to conform to state law standard for SLT for students with autism) did not individually or cumulatively result in substantive denial of FAPE but—disagreeing with the second tier due to various evidentiary shortcomings—that the placement was not substantively appropriate because the school was unable to implement the IEP's specified student-staff ratio [tuition reimbursement case]

S B.K. v. New York City Dep't of Educ., __ F. Supp. 2d __, 63 IDELR ¶ 68 (E.D.N.Y. 2014)
- ruled that the proposed IEP for eight-year old with autism substantively appropriate and rejected the various procedural challenges as either unproven (e.g., predetermination and FBA/BIP) or nonprejudicial (lack of parent counseling/training [tuition reimbursement case]

S L.M. v. E. Meadow Sch. Dist., __ F. Supp. 2d __, 63 IDELR ¶ 71 (E.D.N.Y. 2014)
- ruled that the IEP for the five-year old with autism was substantively appropriate, resulting in progress when the parents pulled him out at noon each day and where their challenge was to the reasonableness of the IEP's feeding provision [tuition reimbursement case]

S R.B. v. New York City Dep't of Educ., __ F. Supp. 2d __, 63 IDELR ¶ 74 (E.D.N.Y. 2014)
- upheld substantive appropriateness of, and rejected procedural challenges (e.g., composition of IEP team, lack of single vocational assessment, and lack of parent counseling/training) to, proposed IEP to return middle school child with autism from specialized private school [tuition reimbursement case]

S McAllister v. Dist. of Columbia, __ F. Supp. 2d __, 63 IDELR ¶ __ (D.D.C. 2014)
- upheld IHO's rejection of parent's FAPE separate claims based respectively on broad discretion in weighing of the testimony and complaint's failure to put district on reasonable notice

III. MAINSTREAMING/LRE

S D.W. v. Milwaukee Pub. Sch. (supra)
- ruled that placement of high school student with intellectual disabilities in classroom for students with intellectual disabilities was the LRE based on evidence that the student could not learn satisfactorily in the parents' preferred placement in multi-categorical classroom

S **M.W. v. New York City Dep't of Educ. (supra)**
- upheld "integrated co-teaching" placement, which is "somewhere in between a regular classroom and a segregated, special education classroom" as the LRE for this individual 9-year-old child with autism, ADHD, and Tourette syndrome

P Cobb Cnty. Sch. Dist. v. A.V., 961 F. Supp. 2d 1252, 61 IDELR ¶ 242 (N.D. Ga. 2013)
- ruled that change of placement of high school senior with SLD/SLI (based on apraxia) from general education to special education track for core classes violated LRE where co-teaching model would have provided greater educational benefits (only disputed factor of the test)

IV. RELATED SERVICES

P/S Cobb Cnty. Sch. Dist. v. A.V. (supra)
- upheld IHO decision that vision therapy was, but sensory integration therapy was not, necessary for the special education benefit of a high school student with SLD/SLI (based on apraxia)

V. DISCIPLINE ISSUES

S Garmany v. Dist. of Columbia, 935 F. Supp. 2d 177, 61 IDELR ¶ 15 (D.D.C. 2013)
- ruled that parents failed to prove that the district's in-school suspension of student with SLD constituted a failure to implement the IEP—standard is substantial departure, and parents did not show that the IEP precluded any punishment options other than the BIP's listed consequences

VI. ATTORNEYS' FEES

S Genrette v. Options Pub. Charter Sch., 926 F. Supp. 2d 364, 60 IDELR ¶ 216 (D.D.C. 2013)
- order for FBA but not for parents' other requests for private placement or compensatory education does not suffice for prevailing party status for attorneys' fees

S Alief Indep. Sch. Dist. v. C.C., 713 F.3d 268, 61 IDELR ¶ 3 (5th Cir. 2013)
- parents who lost their case do not qualify prevailing party entitled to attorneys' fees upon successfully defending district's request for recovery of their attorneys' fees

S Giosta v. Midland Sch. Dist. No. 7 (supra - T.G.)
- upheld denial of attorneys' fees where parents prevailed only on minor items, which were de minimis compared to their extensive claims (e.g., compensatory education for reading goals but not three years of entire denial of FAPE nor IEE at public expense)

P Los Angeles Cnty. Office of Educ. v. C.M., 550 F. App'x 387, 62 IDELR ¶ 164 (9th Cir. 2013)
- parents were prevailing party where they succeeded on the issue of the county's temporary liability for the student's residential service while in and upon release from juvenile hall, even though not subsequently (but only for the due process hearing, not the court proceeding)

P Jo.R. v. Garden Grove Unified Sch. Dist., 551 F. App'x 902, 62 IDELR ¶ 166 (9th Cir. 2013)
- concluded that district court abused its discretion in limiting attorneys' fees to $51k, excluding, for example, time spent reviewing/annotating transcript and preparing closing arguments, awarding instead $242k

P Justin R. v. Matayoshi, __ F. App'x __, 62 IDELR ¶ 283 (9th Cir. 2014)
- ruled that magistrate judge's order that specified jurisdiction for oral settlement agreement was sufficient for "judicial imprimatur" prerequisite for prevailing status

P Hawkins v. Potomac Lighthouse Pub. Charter Sch., __ F. Supp. 2d __, 62 IDELR ¶ 291 (D.D.C. 2014)
- ruled that child's failure to avail herself of significant portion of compensatory education does not affect prevailing status

S Capital City Pub. Charter Sch. v. Gambale, __ F. Supp. 2d __, 63 IDELR ¶ 6 (D.D.C. 2014). But see Doe v. Attleboro Pub. Sch., 960 F. Supp. 2d 286, 60 IDELR ¶ 247 (D. Mass. 2013) (not frivolous)
- ruled that parents' attorney was liable for district's attorneys' fees due to frivolous claims

VII. REMEDIES

A. TUITION REIMBURSEMENT

S M.N. v. State of Hawaii Dep't of Educ., 509 F. App'x 640, 60 IDELR ¶ 181 (9th Cir. 2013)
- upheld denial of tuition reimbursement for child with autism who received a "meager" educational benefit after a year in a private ABA-based program

P G.G. v. Dist. of Columbia (supra)
- ruled that the parents' unilateral placement in the wake of a child find violation did not equitably eliminate the district's reimbursement obligation at least where the district did not have an appropriate placement at those times

(P) Latynski-Rossiter v. Dist. of Columbia, 928 F. Supp.2d 57, 60 IDELR ¶ 215 (D.D.C. 2013)
- ruled that transfer of rights at age 18 does not extinguish parent's standing to pursue tuition reimbursement, at least when the claim accrued before the transfer

S L.K. v. Ne. Sch. Dist., 932 F. Supp. 2d 467, 60 IDELR ¶ 286 (S.D.N.Y. 2013)
- upheld denial of tuition reimbursement where the parent did not meet burden of proof that the private school's program was reasonably calculated to meet the child's unique needs based on services and progress

P/S Dep't of Educ. v. S.C. (supra)
- reduced reimbursement 50% due based on the equities—good faith efforts of district and unreasonable conduct of parent that tainted collaborative process, e.g., failed to raise issue of inclusion until the hearing

P Blount Cnty. Bd. of Educ. v. Bowens, 929 F. Supp. 2d 1199, 60 IDELR ¶ 281 (N.D. Ala. 2013)
- roundly rejected district's equity claims, including lack of timely notice, where district knew of and acquiesced, even approved, of parents' placement

P Deer Valley Unified Sch. Dist. v. L.P. (supra)
- parent's unilateral placement met Rowley "floor of opportunity" standard

S M.B. v. Minisink Valley Cent. Sch. Dist., 523 F. App'x 76, 61 IDELR ¶ 5 (2d Cir. 2013)
- deferred to SRO's decision that the parents' private placement for the child with ED did not meet the Frank G.-Gagliardo test for substantive appropriateness—here lack of individualized program targeted to child's identified needs despite some academic and behavior progress

P D.C. v. New York City Dep't of Educ. (supra)
- concluded that the private placement was appropriate despite teacher's lack of certification in the school's methodology and that the equities supported reimbursement where parent cooperated throughout the process

P P.K. v. New York City Dep't of Educ., 819 F. Supp. 2d 90, 57 IDELR ¶ 139 (E.D.N.Y. 2011), aff'd in summary order, 526 F. App'x 135, 61 IDELR ¶ 96 (2d Cir. 2013)
- upheld direct retroactive payment of tuition after finding that the proposed IEP for preschool child with autism lacked sufficient specially designed instruction (1:1 ABA) and related services (speech therapy and parent training per state regulation) and that the parent's unilateral placement was appropriate—affirmance focusing on inadequate 1:1 instruction and discounting retrospective evidence of actual services

S **Munir v. Pottsville Sch. Dist. (supra)**
- followed Mary T. (supra) to reject entitlement to tuition reimbursement at residential facility where the student required it for mental health needs segregable from his educational needs

P/S Cobb Cnty. Sch. Dist. v. A.V. (supra)
- upheld appropriateness of private placement, although less rigorous and less integrated than district's proposed placement and reduction of reimbursement to one half for tuition and vision therapy where both parties were equally at fault

S D.B. v. New York City Dep't of Educ. (supra)
- concluded, alternatively, that parent's unilateral placement was inappropriate because contrary to the IEP the school lacked socialization opportunities, OT/PT, and extensive academic instruction

P F.O. v. New York City Dep't of Educ. (supra)
- concluded that private day school was appropriate for child with autism and other disabilities and that the equities favored the payment, ordering reimbursement for annual tuition of $92k

P Dist. of Columbia v. Vinyard (supra)
- upheld reimbursement to student's medical malpractice trust fund, which had paid the tuition for the unilateral placement

(P) Jenna R.P. v. City of Chicago Sch. Dist. No. 229, 3 N.E.3d 927, 62 IDELR ¶ 180 (Ill. Ct. App. 2013)
- ruled that the parent's unilateral placement need not be in the LRE and need not be FAPE in the sense of the district's earlier-step obligation, remanding for determination of the amount of reimbursement

S K.E. v. Dist. of Columbia (supra)
- ruled that the residential placement for this child with ED was not necessary for educational purposes

P/S M. K-N v. Dist. of Columbia, __ F. Supp. 2d __, 62 IDELR ¶ 295 (D.D.C. 2014)
- upheld full reimbursement from unilateral placement to IEP meeting (in the wake of prejudicial procedural violation of failing to hold the IEP meeting) but rejected the parents' contention that the IEP meeting was invalid, because it is the issue of a separately filed proceeding

P C.F. v. New York City Dep't of Educ. (supra)
- deferred to the IHO's determination that the unilateral placement was appropriate and that the equities did not weight against reimbursement

P **C.L. v. Scarsdale Union Free Sch. Dist., 744 F.3d 826, 63 IDELR ¶ 1 (2d Cir. 2014)**
- ruled that parent's placement was appropriate and that the equities (i.e., parental cooperation) also weighed in favor of reimbursement, reaffirming that LRE was a, but not the, factor in determining appropriateness of the unilateral placement

P Scott v. New York City Dep't of Educ. (supra)
- upheld, based on equities (e.g., parents' prompt notification and district being less than forthcoming), direct payment to private school where parent bartered for and could not come close to affording the tuition

P/S **S.L. v. Upland Unified Sch. Dist., __F.3d__, 63 IDELR ¶ 32 (9th Cir. 2014)**
- ruled that parents' unilateral placement in parochial school was appropriate and they were entitled to reimbursement for the tuition and transportation but not the private aides

B. COMPENSATORY EDUCATION[7]

S Phillips v. Dist. of Columbia, 932 F. Supp. 2d 42, 60 IDELR ¶ 277 (D.D.C. 2013)
- upheld denial of compensatory education after extensive and expensive remand process based on ultimate conclusion that the child's "current difficulties do not stem from the original denial of a FAPE"

P Tyler W. v. Upper Perkiomen Sch. Dist. (supra)
- ruled that child was entitled to full days while the child was in partial hospitalization due to entire lack of implementation of IEP, resulting in 420 hours of compensatory education, and no reduction for reasonable rectification where the district knew well in advance of the violation

(S) Dist. of Columbia v. Masucci , __ F. Supp. 2d __, 62 IDELR ¶ 228 (D.D.C. 2014)
- granted stay of IHO's order of private school placement as compensatory education due to likelihood of success on appeal that it did not meet qualitative approach

(P) Fullmore v. Dist. of Columbia , __ F. Supp. 2d __, 63 IDELR ¶ 94 (D.D.C. 2014)
- ruled that IHO's granting of parent's other requested remedy of an IEE does not moot the claim for compensatory education to the extent that the challenged reevaluation was inappropriate and resulted in denial of FAPE

[7] For the latest treatment, see Perry A. Zirkel, "Compensatory Education under the IDEA: An Annotated Update of the Law," West's Education Law Reporter, 2013, v. 291, pp. 1–10. For the difference between the quantitative and qualitative approaches, see, e.g., Perry A. Zirkel, "The Two Competing Approaching for Calculating Compensatory Education under the IDEA," West's Education Law Reporter, 2010, v. 157, pp. 55–63.

C. OTHER REMEDIES (INCLUDING IEE REIMBURSEMENT)[8]

S Dist. of Columbia v. Pearson, 923 F. Supp. 2d 82, 60 IDELR ¶ 194 (D.D.C. 2013)
- invalidated IHO remedial order in the absence of 1) issue/ruling of denial of FAPE; and 2) reasonable evidentiary basis

P M.Z. v. Bethlehem Area Sch. Dist., 521 F. App'x 74, 60 IDELR ¶ 273 (3d Cir. 2013), cert. denied, 134 S. Ct. 479 (2013)
- upon finding the district's evaluation not appropriate, the IHO was w/o authority to order curative measures for the evaluation, instead being obligated under the IDEA to approve the parent's request for an IEE at public expense

VIII. OTHER IDEA ISSUES[9]

S Smith v. Henderson, __ F. Supp. 2d __, 61 IDELR ¶ 65 (D.D.C. 2013)
- denied preliminary injunction, ruling that closing of multiple schools for under-enrollment did not violate the IDEA (or the ADA) where the reassigned schools offered the students the same services

S Driessen v. Miami-Dade Cnty. Sch. Bd., 520 F. App'x 912, 61 IDELR ¶ 95 (11th Cir. 2013)
- upheld *sua sponte* dismissal for frivolousness where parent lacked standing as having legal guardianship of her children

S Chigano v. City of Knoxville, 529 F. App'x 753, 61 IDELR ¶ 154 (6th Cir. 2013)
- affirmed rejection of Fourteenth Amendment SDP liability claim challenging school officials' failure to inform police officer, called in response to high school student's disruptive conduct, of her disability (autism)

S Am. Nurses Ass'n v. Torlakson, 304 P.3d 1038, 61 IDELR ¶ 230 (Cal. 2013)
- ruled that state nurse practice act allows school personnel who are not licensed nurses to administer insulin to children with diabetes per the child's IEP or § 504 plan where specifically authorized by physician's prescription

S **E.R.K. v. State of Hawaii Dep't of Educ., 782 F.3d 982, 61 IDELR ¶ 241 (9th Cir. 2013)**
- ruled that a state law that ends eligibility for both special ed and general ed students at their 20th birthday violates the IDEA where it offers public education for adults—in this case, GED and competency-based programs

[8] For a useful checklist of IHO analysis of IEEs at public expense, see Perry A. Zirkel, "Independent Educational Evaluation Reimbursement: A Checklist," West's Education Law Reporter, 2008, v. 231, pp. 21-33.

[9] See also G.L. v. Ligonier Valley Sch. Dist., 62 IDELR ¶ 170 (W.D. Pa. 2013) (ruling that IDEA's statute of limitations is up to four, not two, years) – currently on appeal at the Third Circuit.

S D.K. v. Dist. of Columbia, 962 F. Supp. 2d 227, 62 IDELR ¶ 52 (D.D.C. 2013); Aikens v. Dist. of Columbia, 950 F. Supp. 2d 186, 61 IDELR ¶ 132 (D.D.C. 2013)
- ruled that move from one school to another that was not materially different was not a change in placement

S R.B. v. Mastery Charter Sch., 532 F. App'x 132, 62 IDELR ¶ 183 (3d Cir. 2013)
- ruled that charter school's disenrollment of IEP student, which was purportedly based on truancy, violated stay-put even though parent filed for due process after the disenrollment (last agreed upon IEP standard)

P A.S. v. Office for Dispute Resolution, 88 A.3d 256, 62 IDELR ¶ 239 (Pa. Commw. Ct. 2014)
- ruled that 1) IHO had authority under IDEA to determine whether a valid settlement agreement existed between the parties and 2) settlement agreement was the result of a unilateral mistake on part of school district, rather than a mutual mistake, thus being valid

(P/S) Everett v. Dry Creek Joint Elementary Sch. Dist., __ F. Supp. 2d __, 63 IDELR ¶ 5 (E.D. Cal. 2014)[10]
- dismissed § 1983 liability claims based on IDEA, § 504, and ADA, but not based on Fourteenth Amendment of child with multiple disabilities, including autism, allegedly subjected to severe retaliatory physical and mental abuse

IX. SECTION 504/ADA ISSUES[11]

S **D.L. v. Baltimore City Bd. of Sch. Comm'rs, 706 F.3d 256, 60 IDELR ¶ 121 (4th Cir. 2013)**
- held that § 504 does not compel public schools to provide FAPE to children with disabilities in private schools (and that having a prerequisite that they enroll in public schools does not violate their First Amendment freedom of religion)

S J.P.M. v. Palm Beach Cnty. Sch. Bd., 916 F. Supp. 2d 1314, 60 IDELR ¶ 158 (S.D. Fla. 2013)
- granted district's motion for summary judgment on § 504 liability claim of parent of student with autism allegedly subject to physical restraint 89 times (27 prone) in 14 months for aggressive and self-injurious behaviors—lack of intentional discrimination (i.e., deliberate indifference)

(P) D.A. v. Meridian Joint Sch. Dist. No. 2, 289 F.R.D. 614, 60 IDELR ¶ 192 (D. Idaho 2013)
- denied district's motion for summary judgment of parent's § 504 liability claim based on bullying of student on 504 plan for high-functioning Asperger disorder (who sought IEE and eligibility under IDEA in separate proceeding)

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[10] The court subsequently denied dismissal of the parents' direct IDEA claims against the state. Everett H. v. Dry Creek Joint Elementary Sch. Dist., 63 IDELR ¶ 39 (E.D. Cal. 2014).

[11] For a comprehensive source, see PERRY ZIRKEL, SECTION 504, THE ADA AND THE SCHOOLS (2011)(available from LRP Publications, www.lrp.com or tel. 800-341-7874).

S Kimble v. Douglas Cnty. Sch. Dist. RE-1, 925 F. Supp. 2d 1176, 60 IDELR ¶ 221 (D. Colo. 2013)
- issued summary judgment for district that offered § 504 plan identical to the IEP the parent revoked, interpreting § 504 as permitting but not requiring, district to offer other educational modification or accommodations[12]

(P) **A.C. v. Shelby Cnty. Bd. of Educ., 711 F.3d 687, 60 IDELR ¶ 271 (6th Cir. 2013)**
- preserved for trial § 504 retaliation claims of parent who filed OCR complaint on behalf of elementary school child with peanut allergy, diabetes, and learning problems—genuine factual issues as to whether the principal's reporting of the parent for child abuse was retaliation for the parent's repeated requests for monitoring the child's glucose levels in the classroom rather than the school clinic

S **G.C. v. Owensboro Pub. Sch., 711 F.3d 623, 60 IDELR ¶ 272 (6th Cir. 2013)**
- rejected parent's child find claim under § 504 in absence of sufficient evidence of discrimination, i.e., bad faith or gross misjudgment

(P) Sutherlin v. Indep. Sch. Dist. No. 40, 960 F. Supp. 2d 1254, 61 IDELR ¶ 69 (N.D. Okla. 2013)
- denied dismissal of parent's claim that district was deliberately indifferent to disability-based bullying leading to suicidal depression of 13-year -old with SLD and Asperger disorder

S Long v. Murray Cnty. Sch. Dist., 522 F. App'x 576, 61 IDELR ¶ 122 (11th Cir. 2013)
- rejected § 504 liability suit filed on behalf of student with Asperger syndrome who committed suicide allegedly as a result of disability-based peer harassment—lack of deliberate indifference

(P) **K.M. v. Tustin Unified Sch. Dist., 725 F.3d 1088, 61 IDELR ¶ 182 (9th Cir. 2013),** cert. denied, 134 S. Ct. 1493 (2014)
- preserved for further proceedings where high school students with hearing impairment were entitle to Communication Action Real Time Transcription (CART) under Title II (public services) of the ADA even if not under the IDEA, ruling that a school district's compliance with its obligations to a deaf or hard-of-hearing child under the IDEA does not necessarily establish compliance with the ADA Title II effective communication regulation

S Mann v. Louisiana High Sch. Athletic Ass'n, 535 F. App'x 405, 61 IDELR ¶ 186 (5th Cir. 2013)
- ruled, in denying preliminary injunction that psychologist's diagnosis of anxiety disorder, standing alone with only a conclusory statement about ADA eligibility, does not suffice to establish that the student met the definition of disability under the ADA (as overlapping with but distinct from the definition under the IDEA)

[12] For an unpublished decision that reached the same overall outcome but with different facts and a separate route, see Lamkin v. Lone Jack C-6 Sch. Dist., 58 IDELR ¶ 197 (W.D. Mo. 2012). But cf. D.F. v. Leon Cnty. Sch. Bd., 62 IDELR ¶ 167 (N.D. Fla. 2014) (ruling that parent of deaf child who exited child under the IDEA but requested assistive technology stated a claim under § 504).

S T.M. v. Dist. of Columbia, 961 F. Supp. 2d 169, 61 IDELR ¶ 296 (D.D.C. 2013)
- rejected § 504 claim where allegations of bad faith or gross misconduct either amounted to repetition of denial of FAPE or speculation as to district's motives

(P) Chambers v. Sch. Dist. of Philadelphia, 537 F. App'x 90, 62 IDELR ¶ 1 (3d Cir. 2013)
- ruled that district's repeated failure to implement OT and S/LT provisions of IEP for student with autism, who had received an IHO award of $209,000 in compensatory education under the IDEA (in the form of a trust fund), could constitute deliberate indifference, thus liability for money damages, under § 504

S Pagan-Negron v. Seguin Indep. Sch. Dist., 974 F. Supp. 2d 1020, 62 IDELR ¶ 11 (W.D. Tex. 2013)
- rejected hostile environment claim under § 504/ADA based on principal's alleged disciplinary berating of student with SLI where the principal did not know of the child's behavior related disability until a diagnosis months later for Asperger disorder

S **CG v. Pennsylvania Dep't of Educ., 734 F.3d 224, 62 IDELR ¶ 41 (3d Cir. 2013)**
- ruled that state's census-based funding formula for special education does not violate § 504 and the ADA—failure to prove that it denied the class members meaningful access (i.e., deprived them of "a program, benefit, or service that was provided to the disabled students who attend schools in the nonclass districts")

S **B.M. v. S. Callaway R-II Sch. Dist., 732 F.3d 882, 62 IDELR ¶ 42 (8th Cir. 2013)**
- upheld summary judgment against parent's § 504/ADA claims, ruling that district's delay in evaluating and providing 504 plan for child with alternate diagnoses of ADHD and dysthymic disorder, including insisting on prerequisite of IDEA evaluation, did not constitute bad faith or gross misjudgment[13]

S Estate of A.R. v. Muzyka, 543 F. App'x 363, 62 IDELR ¶ 43 (5th Cir. 2013)
- upholding rejection of liability lawsuit on 9-year-old child with disabilities who drowned while participating in summer enrichment program—lack of showing of bad faith, gross misjudgment, or deliberate indifference

(P) A. v. Hartford Bd. of Educ., __ F. Supp. 2d __, 62 IDELR ¶ 47 (D. Conn. 2013)
- ruled that § 504 is one means of enforcing (i.e., responding to non-implementation of) an IDEA hearing officer decision

S A.G. v. Lower Merion Sch. Dist., 542 F. App'x 194, 62 IDELR ¶ 102 (3d Cir. 2013); see also **S.H. v. Lower Merion Sch. Dist., 729 F.3d 248, 61 IDELR ¶ 271 (3d Cir. 2013)**[14]
- upholding summary judgment against parent's § 504/ADA "regarded-as" money-damages claim for failure to show that alleged misidentification as a special education student (here SLD/SLI, including suspected ADHD) constituted deliberate indifference

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[13] Before filing suit, the parents received a ruling from OCR that the district violated § 504 for two of her twelve complaints, which both concerned discipline but not, for example, delayed evaluation or delayed FAPE.

[14] In S.H., the court also rejected an IDEA child find claim because, as both parties apparently agreed, the student did not qualify as having a disability.

S **CTL v. Ashland Sch. Dist., 743 F.3d 524, 62 IDELR ¶ 252 (7th Cir. 2014)**
- summarily rejecting § 504 suit of first-grade student with diabetes due to lack of intentional discrimination or reasonable accommodation—minor deviations in implementing 504 plan or doctor's orders that were not unsafe are not sufficient to meet these standards

S **Estate of Lance v. Lewisville Indep. Sch. Dist., 743 F.3d 982, 62 IDELR ¶ 282 (5th Cir. 2014)**
- summarily rejecting § 504 liability for suicide of child with disability—lack of proof of deliberate indifference of district in response to bullying, which had allegedly led to the suicide

S Moore v. Chilton Cnty. Bd. of Educ., __ F. Supp. 2d __, 62 IDELR ¶ 286 (M.D. Ala. 2014)
- rejected, due to lack of deliberate indifference, parent's claim that district was liable for disability-based bullying leading to suicide of high school student with growth disorder

S **C.L. v. Scarsdale Union Free Sch. Dist. (supra)**
- ruled that a § 504 claim may be predicated on the alleged denial of access to FAPE as compared to nondisabled students but it requires bad faith or gross misjudgment, which the parents failed to prove

S M.A. v. New York Dep't of Educ., __ F. Supp. 2d __, 63 IDELR ¶ 18 (S.D.N.Y. 2014)
- summarily rejected parent's ADA retaliation claim for failure to show any causal connection between her advocacy on behalf of her daughter with autism and the paraprofessional's alleged abuse of child and supervisors' alleged failure to report it

(P) Pollack v. Reg'l Sch. Unit 75, __ F. Supp. 2d __, 63 IDELR ¶ __ (D. Me. 2013)
- denied dismissal of § 504/ADA retaliation and failure-to-modify (specifically, refusal to allow child to carry recording device) claims, among others (e.g., First and Fourth Amendment claims), of parent of child with autism that were separable from their IDEA FAPE claim, which they lost at the due process hearing and is included in the appeal

Glossary of Acronyms and Abbreviations

ABA	applied behavior analysis
ADA	Americans with Disabilities Act
ADHD	attention deficit hyperactivity disorder
BIP	behavior intervention plan
C.F.R.	Code of Federal Regulations
ED	emotional disturbance
ESY	extended school year
FAPE	free appropriate public education
FBA	functional behavior analysis
GED	general education diploma
IDEA	Individuals with Disabilities Education Act
IEE	independent educational evaluation
IEP	individualized education program
IHO	impartial hearing officer
LRE	least restrictive environment
OCR	Office for Civil Rights
ODD	oppositional defiant disorder
OHI	other health impairment
OT	occupational therapy
PDD	pervasive developmental disorder
PEL	present educational level
PT	physical therapy
PTSD	post-traumatic stress disorder
§ 504	Section 504 of the Rehabilitation Act
SLD	specific learning disability
SLI	speech and language impairment
S/LT	speech and language therapy
SRO	state review officer (i.e., second tier)
U.S.C.	United States Code (i.e., federal legislation)